

Samuel A. Simon, Esq.
901 15th Street, NW, Suite 230
Washington, D.C. 20005-2301

(202) 408-1400
FAX (202) 408-1134

July 3, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William A. Caton
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: CS Docket No. 95-61; Motion to File Comments Late

Dear Mr. Caton:

On behalf of METS Fans United/Virginia Consumers for Cable Choice and Fairfax County Citizens For Cable Competition, I hereby request permission to file late the attached comments in the above referenced proceeding.

Thank you.

Sincerely,



Samuel A. Simon

/attachments

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JUL - 3 1995

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Annual Assessment of the Status of
Competition in the Market for the
Delivery of Video Programming

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CS Docket No. 95-61

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Comments of METS Fans United/Virginia Consumers
for Cable Choice, Fairfax County Citizens For
Cable Competition

METS Fans United/Virginia Consumers for Cable Choice (VCCC) and Fairfax County Citizens for Cable Competition (FCCFCC) submit the following comments in the above referenced proceeding. The Commission seeks comments that will be used in the preparation of the Commission's second annual report, the *1995 Competition Report*, on the status of competition in the marketplace for video programming.

VCCC is an organization representing more than 2,000 cable households in Northern Virginia.¹ VCCC was formed in 1992 to protest Media General Cable's decision to drop WWOR-TV from New York from its program lineup. VCCC members believe that the only

¹More than 2,500 individuals representing over 2,000 households have signed petitions endorsing VCCC's goals, but support for cable competition is strong throughout northern Virginia. In 1993, VCCC commissioned a poll of Northern Virginia cable television subscribers. Ninety-one percent favored allowing a second company to operate in their area and offer competition to the incumbent cable operator.

practical way to bring WWOR-TV service back to Fairfax County is to open the cable market to new competitors, including the local telephone company. VCCC was one of several organizations to have submitted amicus briefs in federal courts in support of Bell Atlantic's successful challenge to Section 533(b) of the 1984 Cable Act.² VCCC members want access to WWOR-TV and New York METS baseball games carried on the station. VCCC members want the additional programming choices that will be available to consumers throughout the Washington, D.C. metropolitan area as a result of competition in the video programming market.

FCCFCC is a grassroots organization that has formed to encourage flexible and responsible government, open access, and open competition in concert with effective regulation of cable television providers operating in Fairfax County, Virginia. FCCFCC was formed because the incumbent cable operator and the local cable regulatory affairs office have been either unwilling or unable to address reasonable consumer concerns about cable television prices and service in Fairfax County, Virginia. FCCFCC encourages competition in the video programming market from direct broadcast satellite, the local telephone company, and other providers. FCCFCC members are working to promote this agenda on the local and federal levels. FCCFCC actively supports legislation and regulatory actions that promote competition

² Other Northern Virginia organizations who joined VCCC as amici include the Alexandria Federation of Civic Associations, the Virginia Association for the Deaf, Inc., the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons, the Virginia Public Interest Coalition, the Men's Senior Baseball League of the Washington Metropolitan Area, and the NAACP-Alexandria Chapter. In addition, the Fairfax County Federation of Citizens Associations adopted a resolution supporting the efforts of its sister Federation in the suit and has contacted the Commission to express its support for Bell Atlantic's video dialtone application for Fairfax County, Virginia.

between local telephone companies and local cable companies.

I. The Market for Video Programming In Fairfax County

VCCC and FCCFCC believe Fairfax County is an ideal market for video programming services. The county is densely populated, and the citizens are well educated, earn a high per capita personal income, and represent a cross section of the U.S. population. The population of the county is expected to reach 879,500 persons in 1995 and 941,500 persons by the year 2000.³ Fairfax county has a high level of education attainment with 91.6% of persons over the age of 25 earning a high school diploma and 29.9% attaining at least a bachelors degree.⁴ In 1991 the median household income was \$61,000, and the median family income was \$70,000.⁵ The per capita personal income for Fairfax County, Fairfax City, and Falls Church City in 1992 was \$31,204.⁶

Furthermore, the population represents a cross-section of ethnic groups with varying cultural backgrounds who are likely to have diverse programming needs and entertainment preferences.⁷ Based on these demographics, VCCC and FCCFCC assert that Fairfax County is an attractive market for video programming services. Therefore, the County is a good test

³Fairfax County Office of Management and Budget Demographics Division Fax Information Telephone Line.

⁴1992 *Household Survey*, Fairfax County Office of Management and Budget.

⁵Fairfax County Office of Management and Budget Fax Information Telephone Line.

⁶Bureau of Economic Analysis, U.S. Department of Commerce (information provided on the Fairfax County Office of Management and Budget's Fax Information Telephone Line).

⁷According to Fairfax County's Office of Management and Budget Demographics Division the 1992 racial breakdown of the County's population is as follows: 76.7% white, 6.6% black, 9.3% Asian, 6.2% Hispanic, and 1.2% other.

case to determine if there is competition in the marketplace for video programming. If competitors have not entered the Fairfax County market to date, it is due to artificial barriers to entry rather than market considerations. The market for new competitors is here.

II. The Status of Competition In The Marketplace For Video Programming

VCCC and FCCFCC assert that, by any standard of measurement, competition in the current marketplace for video programming does not exist. From the consumer perspective, two factors indicate a competitive marketplace: reasonable rates and a wide variety of programming choices. Since the enactment of the Cable Television Consumer Protection and Competition Act of 1992, the consumer has benefited from neither lower rates nor increased programming. Instead, consumers continue to be held hostage to the whims of the cable service provider who has no incentive to maintain affordable prices, expand programming, or carry the channels best suited to subscriber preferences.

III. Cable Rates Have Continued to Sore

The 1992 Act was designed in part to lower cable bills, but consumers in Fairfax County have continued to endure rate hikes. This trend is clearly shown in the attached chart (Attachment A). The chart, based on actual Media General Cable (MGC) subscriber statements, shows a steady pattern of rate increases every year from 1986 through the present. Clearly, the 1992 Act has provided no rate relief for Fairfax County consumers. Since 1992, rates for basic

and extended basic service have increased from \$28.95/per month to \$34.90/per month -- an increase of over 20% percent.

Although MGC's rates have risen steadily over the last decade, Fairfax County consumers continue to use MGC because there is no reasonable alternative. Some would argue that Fairfax County residents unhappy with MGC could subscribe to Direct TV or PrimeStar, the two satellite services available to consumers. However, before subscribers can have access to PrimeStar they must pay \$100-\$200 for the installation of special receiving equipment.⁸ Similarly, before consumers can subscribe to Direct TV they must invest up to \$1100 for the delivery and installment of a satellite dish, and then pay an additional fee for each TV connection to the satellite within the same household.⁹ For many consumers, these satellite services do not offer a viable alternative to MGC's excessive rate hikes.

IV. Consumers are Being Denied Access to All Available Programming

Despite the explosive growth of cable networks, cable companies continue to provide only a fraction of the programming choices available. Although there are 155 cable networks available nationally (Attachment B), the citizens of Fairfax County have access to only a fraction of these channels. Even if Fairfax County residents subscribed to every premium channel

⁸"Direct TV's All Digital Domain," *Broadcasting & Cable*, March 28, 1994.

⁹Prices based on those charged at Luskins electronics stores. At Luskins, a "single" satellite dish costs \$699.99 and a "deluxe" dish costs \$899.99. The deluxe dish makes it possible for a household to view more than one television show at a time. Installation for either dish costs \$199.99.

provided my MGC, they would only receive fifty-four¹⁰ of the 155 available channels. That's just 35% of the total number of cable national networks available nationally (Attachment C).

The only alternative to MGC is subscribing to one of the two satellite service providers available to Fairfax County Residents. However, both satellite services fail to provide significantly greater programming choices. PrimeStar's "Value Pack," which costs \$31.95 per month offers just eighteen national cable network channels.¹¹ Their "Choice Pack" for \$39.90 offers a total of twenty-nine channels. Their most expensive package, the "Ultra Pack," for \$52.95 per month offers a total of thirty-two national cable channels. Those thirty-two channels represent only 21% of the pool of national cable TV networks (Attachment C). While offering more channels than PrimeStar, Direct TV also fails to open access to the tremendous variety of cable programming available nationwide. A resident subscribing to Direct TV's top package, "Total Choice," for \$29.95 per month will receive forty-two national channels which represents 27% of the total number of national cable networks (Attachment C).

Since each company provides a slightly different selection of programming a consumer could creatively subscribe to all three companies -- Media General Cable, PrimeStar, and Direct TV -- as a means of gaining access to the greatest variety of programming.¹² However, even

¹⁰This number is derived from a comparison of the national video services listed in the National Cable Television Association's Spring 1995 *Cable Television Developments* and the channels listed in Media General's June 1995 publication of *Cable Edition*.

¹¹1995 PrimeStar Brochure, "Here's a Sneak Preview of PrimeStar's New Packages."

¹²Of course, it is unreasonable to expect a consumer to buy each providers full service package. For purposes of this analysis, we assume a consumer can build on an a-la-carte basis a package of services to include a portion of each services offerings.

subscribing on an a-la-carte basis to all three services will only provide the subscriber access to 60% of the total number of channels available nationwide.

Exacerbating this limited access, is MGC's arbitrary way of selecting which channels will be carried on its service. Rather than responding to consumer demands for programming, MGC has ignored their subscribers' interests. A prime example is MGC's refusal to carry WWOR-TV despite the outcry of cable subscribers across the county. Such cavalier behavior by any industry can only be explained by a lack of choice for the consumer.

VI. It Is In the Public Interest For the FCC to Approve VDT Services

In the past VCCC and FCCFCC have strongly supported Bell Atlantic's application to the FCC to provide video dialtone service. VCCC and FCCFCC continue to advocate the entrance of video dialtone service providers as a feasible and speedy alternative to the current anti-competitive structure of the market for video programming. In the four years since the Commission adopted its first video dialtone order, VCCC and FCCFCC have submitted a series of comments, reply comments and ex-parte communications to the Commission in a number of video dialtone proceedings and in support of video dialtone applications. VCCC and FCCFCC are astonished that the FCC was unable to approve Bell Atlantic's video dialtone application for Fairfax County and others that would allow American consumers to receive video dialtone on a commercial basis.

As a result of the FCC's failure approve Bell Atlantic's application in a timely manner, Bell Atlantic has withdrawn its video dialtone application. Now, in lieu of their plans to build

a commercial VDT network, Bell Atlantic has opted for a short term solution utilizing microwave technology. In comparison to the potential for multiple program providers on Bell Atlantic's video dialtone network, Bell Atlantic's microwave services will offer less to consumers. VDT could offer an unprecedented array of multimedia services. The substitute microwave system will only support up to 100 channels of one-way programming.

According to Bell Atlantic, they will be resubmitting a revised video dialtone application to the FCC. VCCC and FCCFCC encourage the Commission to act quickly in favor of this application. The Commission's failure to act on this issue has denied cable consumers the benefits of a competitive marketplace. VCCC and FCCFCC view this issue as a priority and believe that the Commission should devote its resources to assessing applications for providing video dialtone. We would suggest that the Commission stop issuing reports on the state (or lack) of competition in video programming markets and act, instead, to let competition flourish.

VII. Conclusion

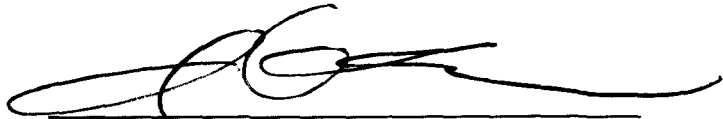
The Commission seeks comment to assess the current status of competition for the delivery of video programming and to evaluate changes in the competitive environment since the *1994 Competition Report* was submitted to Congress last September. The purpose of the report is to monitor and summarize the status of competition in the marketplace for video programming.

VCCC and FCCFCC assert that the continued rate hikes and limited cable programming choices available to consumers in Fairfax County indicate that there is no real competition in the current market for video programming. Cable subscribers have yet to reap the benefits of

today's technology which should be reflected in lower prices and greater programming choices.

VCCC and FCCC believe the Commission will best serve the public interest by opening the market for video programming to video dialtone services. These services will mean lower prices, more programming choices, and access to advanced interactive services for the consumer. While we appreciate the Commission's broad pronouncements in support of video dialtone, we urge the Commission to set and meet an objective to act on all video dialtone applications 30 days after they are submitted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Samuel A. Simon', is written over a horizontal line.

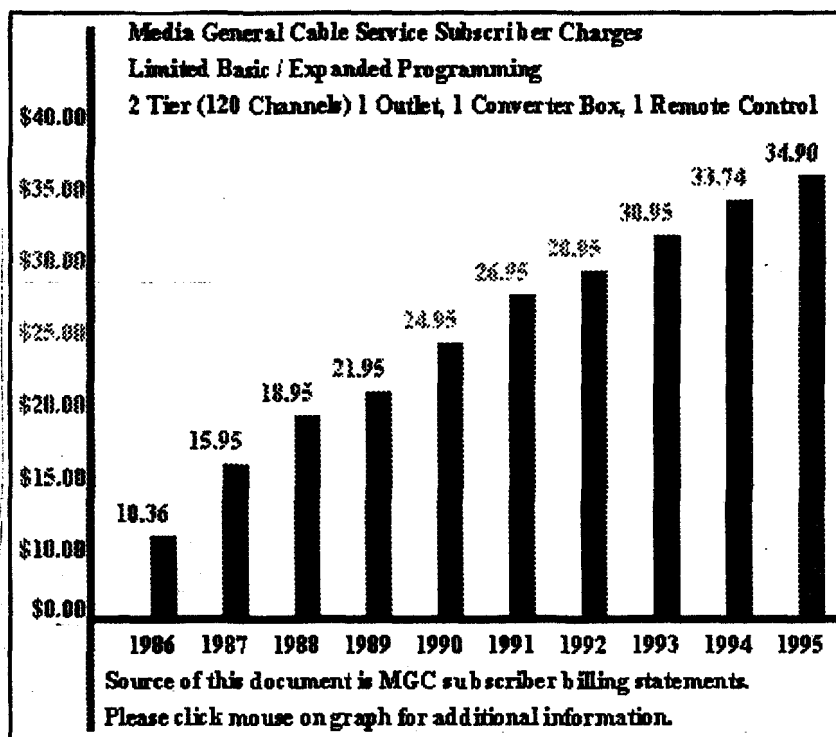
Samuel A. Simon, Esq.
901 15th Street, NW, Suite 230
Washington, D.C. 20005

Counsel for:

METS Fans United/Virginia Consumers for
Cable Choice
10184 Sassafras Woods Court
Burke, Virginia 22015

Fairfax County Citizens For Cable
Competition
P.O. Box 10692
Burke, Virginia 22009

ATTACHMENT A



This information was compiled by FCCFCC.
It is available online on FCCFCC's
Internet home page:

<http://www.his.com/~tle/FCCFCChm.html>

ATTACHMENT B

Table of 1995 Cable Programming

Cable Networks	Media General	Direct TV	Primestar
A&E Television Network (A&E)			
All News Channel			
AMC (American Movie Classics)			
America's Talking			
ANA Television			
Asian American Satellite TV			
BET (Black Entertainment TV)			
The Box			
Bravo Cable Network			
Cable Health Club			
Canal de Noticias NBC			
Canal Sur			
Cartoon Network			
Catalog 1			
Channel America TV Network			
Cinemax 1			
Cinemax 2			
Classic Sports			
Classic Arts Showcase			
CMT: Country Music TV			
CNBC			
c/net: The Computer Network			
CNN (Cable News Network)			
CNNI (CNN International)			
Comedy Central			
Consumer Resource Network (CRN)			
Courtroom TV Network (Court TV)			
The Crime Channel			
C-Span			
C-Span 2			
Deep Dish TV			
The Discovery Channel			
The Disney Channel			
E! Entertainment TV			
Encore Sampler			
Encore			
Encore 60's, 70's, 80's			
Love Stories: Encore 2			
Westerns: Encore 3			
Mystery: Encore 4			
Action: Encore 5			
True Stories and Drama: Encore 6			
Wam!: Encore 7			

Table of 1995 Cable Programming

Cable Networks	Media General	Direct TV	Primestar
Starz: Encore 8			
ESPN			
ESPN2			
EWTN: The Catholic Cable Network			
Faith & Values Channel			
The Family Channel			
The Filipino Channel			
Flix			
FoxNet			
FX			
FXM: Movies from Fox			
Galavision			
Game Show Network			
GEMS International TV			
The Golf Channel			
HBO: Home Box Office			
HBO 2			
HBO 3			
Headline News			
The History Channel			
Home & Garden Television			
Home Team Sports (HTS)			
Home Shopping Network HSN I			
HSN II			
The Idea Channel			
the Independent Film Channel			
The Inspirational Network (INSP)			
International Channel			
Jewish TV Network			
Jones Computer Network (JCN)			
Kaleidoscope:			
America's Disability Channel			
KTLA/UV			
Ladbroke Racing Channel			
The Learning Channel			
Lifetime TV			
Mind Extension University (ME/U):			
The Education Network4			
MOR Music TVG			
The Movie Channel (TMC)			
MTV: Music TV			

Table of 1995 Cable Programming

Cable Networks	Media General	Direct TV	Primestar
MTV Latino			
MuchMusic USA			
NASA TV			
NET - Political NewsTalk Network			
Network One			
NewsTalk TV			
Newsworld International			
Nickelodeon/Nick at Nite			
The '90s Channel			
Nostalgia TV/Story Vision			
Prime SportsChannel Networks			
Product Information Network (PIN)			
QVC			
Q2			
Sci-Fi Channel			
SCOLA			
Shop at Home			
Showtime			
Showtime 2			
SingleVision			
TBS			
The Learning Channel (TLC)			
Telemundo			
TNN: The Nashville Network			
TNT (Turner Network TV)			
The Travel Channel			
Trinity Broadcasting Network			
TRIO			
Turner Classic Movies (TCM)			
TV Asia			
TV-Japan			
U-Network			
Univision			
USA Network			
Value Vision			
VH1 (Video Hits One)			
VIA TV Network			
Video Catalog Channel			
Viewer's Choice			

Table of 1995 Cable Programming

Cable Networks	Media General	Direct TV	PrimeStar
Continuous Hits 1, 2, 3			
Hot Choice			
The Weather Channel			
WGN/UV			
The Worship Network			
WPIX/UV			
WSBK			
WWOR/EMI Service			
Z Music			
C-Span Audio 1			
C-Span Audio 2			
Cable Radio Network			
AEI Music Network			
KJAZ Satellite Radio			
Moody Broadcasting Network			
Music Choice			
SUPERAUDIO Cable Radio Service			
WFMT			
Yesterday USA			
The Employment Channel			
Ingenius			
Interactive Network (IN)			
Main Street			
News Plus			
Prevue Channel Sneak Prevue			
StarNet			
StoryVision Network			
Action Pay Per View			
Cable Video Store (Pay Per View)			
CineLatino (Pay Per View)			
Playboy TV (Pay Per View)			
Request TV (Pay Per View)			
Spice (Pay Per View)			
Adam & Eve (Pay Per View)			

Sources

Cable Networks: National Cable Television Association, *Cable Television Developments*, Spring 1995.

Media General Programming: Media General Cable, *Cable Edition*, June 1995.

Direct TV: Direct TV Brochure, June 1995.

PrimeStar: PrimeStar Brochure, June 1995.

ATTACHMENT C

Table of 1995 Cable Network Access

	Media General	Direct TV	PrimeStar
Number of the 155 National Cable Network Channels Carried	54	42	32
Percent Access to the Total Number of National Cable Networks	35%	27%	21%

Sources

The total number of national cable network channels is based on the listing in the National Cable Television Association's (NCTA) Spring 1995 *Cable Television Developments*.

The number of national cable network channels carried by Media General Cable is based on a comparison of the national cable networks listed in NCTA's Spring 1995 *Cable Television Developments* and the channels listed in Media General Cable's June 1995 edition of *Cable Edition*.

The number of national cable network channels carried by Direct TV and PrimeStar is based on a comparison of the national cable networks listed in NCTA's Spring 1995 *Cable Television Developments* and the channels listed in sales brochures from each company.